

LA PORTE LAW

Donna L. La Porte, Esq. SBN 93428

2030 Main St., Suite 1300

Irvine, CA 92614

Tel: 949-230-7858

Fax: 949-861-6336

donna@laportelaw.net

Attorney for Plaintiff,

U.S. Bank, National Association As Legal Title Trustee For Truman 2016 SC6 Title Trust

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA (EASTERN DIVISION - RIVERSIDE)

U.S. BANK, NATIONAL ASSOCIATION AS) Case No.: EDCV18-02668-SJO (KKx)
LEGAL TITLE TRUSTEE FOR TRUMAN 2016))
SC6 TITLE TRUST,) (UD Case No. UDFS1807601)

Plaintiff,

vs.

KENNETH COUSENS;
JASON BRADLEY POWERS;
JERRY BERNEATHY;
and DOES 1-10 inclusive,

Defendants.

) **NOTICE OF MOTION AND MOTION TO**
) **REMAND CASE AND REQUEST FOR**
) **ATTORNEY'S FEES AND COSTS OF**
) **PLAINTIFF U.S. BANK, NATIONAL**
) **ASSOCIATION AS LEGAL TITLE**
) **TRUSTEE FOR TRUMAN 2016 SC6**
) **TITLE TRUST; MEMORANDUM OF**
) **POINTS AND AUTHORITIES**

) DATE: March 25, 2019

) TIME: 10:00 a.m.

) CTRM: 10C

) **District Judge: S. James Otero**

) **Magistrate Judge: Kenly Kiya Kato**

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD, IF ANY:

PLEASE TAKE NOTICE that on March 25, 2019, at 10:00 a.m., or as soon thereafter as the matter may be heard in Courtroom 10C of the above-entitled court, located at 350 West 1st Street, Los Angeles, CA, 90012, Plaintiff U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Plaintiff") will move this Court for an order remanding this case to the Superior Court

1 of the State of California, County of San Bernardino.

2 The motion is made on the grounds that there is no federal subject matter jurisdiction in this
3 action which was removed by “Third Party Intervener and Real Party In Interest, stephen paul” (“Third
4 Party”) in bad faith for the sole purpose of delaying the subject unlawful detainer action. Simply put, this
5 is an unlawful detainer action involving only the issue of possession of real property located in San
6 Bernardino County, which has been improperly removed to this Court by Third Party.

7 This Motion is based on this Notice of Motion and Motion, and the accompanying Memorandum
8 of Points and Authorities and the pleadings and papers on file in this action and upon such further oral
9 and/or documentary evidence as may be presented at the hearing on this matter.

10 THEREFORE, Plaintiff moves for an order by this Court 1). remanding this case to the Superior
11 Court of the State of California, County of San Bernardino, Fontana Courthouse, 2). for a further order
12 that no other person and/or entity shall be allowed to remove this subject unlawful detainer case to
13 federal court, and, 3). that attorney’s fees and costs be awarded to the Plaintiff.

14 Respectfully Submitted,

15 LA PORTE LAW

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18 Dated: February 20, 2019

18 By: /s/ Donna L. La Porte
19 Donna L. La Porte, Esq.
20 Attorney for Plaintiff,
21 U.S. BANK, NATIONAL ASSOCIATION AS
22 LEGAL TITLE TRUSTEE FOR TRUMAN 2016
23 SC6 TITLE TRUST
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND FACTS

Plaintiff, U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (“Plaintiff” or “Truman”), seeks an order remanding this case back to the Superior Court of the State of California for the County of San Bernardino, Fontana Courthouse, from where it was improperly removed by “Third Party Intervener and Real Party In Interest, stephen paul” (“Third Party”), because there are no grounds for federal subject matter jurisdiction.

The facts of this case are straightforward. This is a residential unlawful detainer action commenced after a non-judicial foreclosure sale. On or about November 7, 2018, a foreclosure sale of the real property commonly known as 1787 North Wilson Ave., Upland, CA 91784 (“Property”), was held and Plaintiff took title to the Property at the foreclosure sale (“Trustee’s Sale”) and received an executed Trustee’s Deed Upon Sale, which was recorded in the Official Records in the office of the County Recorder of San Bernardino County, California, on November 9, 2018, as Instrument Number 2018-0408567 (“TDUS”).¹ Title to the Property has been duly perfected in Plaintiff and Plaintiff is the lawful owner of the Property.

On or about November 16, 2018, after Plaintiff acquired title to the Property, Plaintiff caused to be duly served on the occupants of the Property a written notice requiring them to quit and deliver up possession of the Property to Plaintiff within the time period set forth in such notice (“Notice to Quit”).²

On or about November 28, 2018, after the time to deliver up possession of the Property as set forth in the Notice to Quit had expired, Plaintiff filed a complaint for unlawful detainer against defendants Kenneth Cousens (“Cousens”), Jason Bradley Powers (“Powers”), Jerry Berneathy (“Berneathy”), and DOES 1-10, inclusive, in the San Bernardino Superior Court, Fontana District Courthouse, (“UD Complaint”), initiating the subject action, Case No. UDFS1807601 (“UD Action”). Third Party is not a named defendant in the UD Action.

¹ A true and correct copy of the Trustee’s Deed Upon Sale is attached as Exhibit “1” to the Verified Complaint in the subject unlawful detainer action and is incorporated herein by reference.

² True and correct copies of the Notice to Quit and Proofs of Service thereon are attached as Exhibits “2” and “3,” respectively, to the Verified Complaint in the subject unlawful detainer action and are incorporated herein by reference.

1 On December 27, 2018, Third Party filed the subject frivolous and incomprehensible “Notice of
 2 Filing and Notice of Removal of Superior Court, San Bernardino County, State of California” (“Notice
 3 of Removal”) in the United States District Court, California Central District, Eastern Division, initiating
 4 Case No. CV18-02668 (“Removal Action”) whereby the UD Action was removed to this Court.

5 The UD Action involves the issue of rightful possession of residential property after a
 6 foreclosure sale. The face of the UD Complaint identifies one cause of action for unlawful detainer.
 7 The action presents neither federal question basis nor a diversity basis for federal jurisdiction. Since this
 8 action is properly the subject of state court litigation, it is clear that the Third Party’s attempt to further
 9 delay trial in the UD Action by removing it to a federal court is a farce, designed solely to harass the
 10 Plaintiff, to cause Plaintiff to incur further litigation costs, and to delay Plaintiff’s legitimate attempts to
 11 gain possession of the Property.

12 Accordingly, this action is properly subject to a motion to remand and an award of reasonable
 13 attorneys’ fees and costs.

14 **II. REMAND IS NECESSARY BECAUSE THERE ARE NO GROUNDS FOR FEDERAL**
 15 **SUBJECT MATTER JURISDICTION.**

16 “The right of removal is entirely a creature of statute and ‘a suit commenced in state court must
 17 remain there until cause is shown for its transfer under some act of Congress.’” *Syngenta Crop Prot., Inc.*
 18 *v. Henson*, 537 U.S. 28, 32 (2002) (quoting *Great N. Ry. Co. v. Alexander*, 246 U.S. 276, 280 (1918)).
 19 Generally, where Congress has acted to create a right of removal, those statutes are strictly construed
 20 against removal jurisdiction. *Id.*; *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 667 (9th Cir. 2012); *Gaus v.*
 21 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

22 The removing defendant bears the burden of establishing federal jurisdiction. *Abrego Abrego v.*
 23 *Dow Chem. Co.*, 443 F.3d 676, 682 (9th Cir. 2006); *Gaus*, 980 F.2d at 566-67. “Under the plain terms of
 24 section 1441(a), in order properly to remove [an] action pursuant to that provision, [the removing
 25 defendant] must demonstrate that original subject-matter jurisdiction lies in the federal courts.” *Syngenta*
 26 *Crop Prot.*, 537 U.S. at 33. Failure to do so requires that the case be remanded, as “[s]ubject matter
 27 jurisdiction may not be waived, and . . . the district court must remand if it lacks jurisdiction.” *Kelton*
 28 *Arms Condo. Owners Ass’n v. Homestead Ins. Co.*, 346 F.3d 1190, 1192 (9th Cir. 2003). “If at any time

1 before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be
 2 remanded.” 28 U.S.C. section 1447(c). It is “elementary that the subject matter jurisdiction of the district
 3 court is not a waivable matter and may be raised at anytime by one of the parties, by motion or in
 4 responsive pleadings, or *sua sponte* by the trial or reviewing court.” *Emrich v. Touche Ross & Co.*, 846
 5 F.2d 1190, 1194 n.2 (9th Cir. 1988).

6 There is a “strong presumption against removal.” *Mattel, Inc. v. Bryant*, 441 F. Supp. 2d 1081,
 7 1089 (C.D. Cal. 2005). Accordingly, the “removing party always has the burden of establishing that
 8 removal is proper,” and since the “removal statute is strict construed...any doubt about the right of
 9 removal is resolved in favor of remand.” *Mattel, Inc. v. Bryant*, 441 F. Supp. 2d 1081, 1089 (C.D. Cal.
 10 2005).

11 Based on the Notice of Removal and state court records provided, it is clear that the Court lacks
 12 subject matter over the instant case and it should be remanded.

13 **1. There is No Federal Question Jurisdiction**

14 Federal question jurisdiction extends to those cases in which a well-pleaded complaint establishes
 15 either that: (1) federal law creates the cause of action; or (2) the plaintiff’s right to relief necessarily
 16 depends on a resolution of a substantial question of federal law. *Federal Tax Bd. v. Construction*
 17 *Laborers Vacation Trust*, 463 U.S. 1, 27-28, 103 S.Ct. 2841 (1983). “The presence or absence of federal
 18 question jurisdiction is governed by the well-pleaded complaint rule, which provides that federal question
 19 jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded
 20 complaint”. *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002). The federal
 21 question must be disclosed upon the face of the complaint, unaided by the answer or by the petition for
 22 removal. *Gully v. First Nat. Bank*, 299 U.S. 109, 113, 57 S.Ct. 96 (1936) The existence of a defense
 23 based on federal law is insufficient to support jurisdiction, even if both parties agree that the federal
 24 defense is the only question truly at issue. *Wayne*, 294 F.3d at 1183. “The existence of federal
 25 jurisdiction depends solely on the plaintiff’s claims for relief and not on anticipated defenses to those
 26 claims.” *ARCO Envtl. Remediation, L.L.C. v. Dept. of Health and Envtl. Quality*, 213 F.3d 1108, 1113
 27 (9th Cir. 2000).

1 As a routine unlawful detainer action, Plaintiff could not have brought this action in federal
 2 court initially because the complaint does not competently allege facts creating federal subject matter
 3 jurisdiction, rendering removal improper. 28 U.S.C. §1441(a); see *Exxon Mobil Corp v. Allapattah Svcs.,*
 4 *Inc.*, 545 U.S. 546, 563 (2005). Under 28 U.S.C. §§ 1331, 1441(b), this unlawful detainer action does not
 5 give rise to a federal question or substantial question of federal law because unlawful detainer “is purely
 6 a creature of California law.” *Wells Fargo Bank v. Lapeen*, 2011 WL 2194117 (N.D. Cal. June 6, 2011).
 7 Moreover, the face of the complaint specifically states one cause of action for unlawful detainer. The
 8 elements of an unlawful detainer action based upon the sale of real property at a trustee’s sale are set
 9 forth in California Code of Civil Procedure § 1161(a), which provides in relevant part as follows:

10 (b) In any of the following cases, a person who holds over and continues in possession
 11 of a manufactured home, mobile home, floating home or real property after a three-day
 12 written notice to quit the property has been served upon the person, or if there is a
 13 subtenant in actual occupation of the premises, also upon such subtenant, as described in
 14 Section 1162, may be removed therefrom as prescribed in this chapter:

15 ...

16 (3) Where the property has been sold in accordance with Section 2924 of the Civil
 17 Code, under a power of sale contained in a deed of trust executed by such person, or a
 18 person under whom such person claims, and the title under the sale has been duly
 19 perfected.

20 Thus, Plaintiff is entitled to judgment upon establishing that the Property was sold in accordance with
 21 California *Civil Code* § 2924 and that the requisite notice to quit to defendants was served as described in
 22 California *Code of Civil Procedure* §1162. Ca. Code of Civ. Proc. § 473 (c)(o)(1); California Judges
 23 Benchguides: Landlord-Tenant Litigation: Unlawful Detainer (Benchguide 31, 1997), sec. 31.26, pg. 31-
 24 24; *Stephens, Partain & Cunningham v. Hollis* (1987) 196 Cal.App.3d 948, 952; *Evans v. Superior*
 25 *Court*, (1977) 67 Cal.App.3d 162. As such, a post-foreclosure unlawful detainer Action is very narrow in
 26 scope and only addresses these few state law issues, based entirely on the California *Civil Code* and *Code*
 27 *of Civil Procedure*, not federal law.

28 Additionally, as set forth above, to the extent that Third Party’s defenses to the UD Action are
 based on alleged violations of federal law, those defenses do not provide a basis for federal question
 jurisdiction. Because Plaintiff’s complaint does not present a federal question either on its face or as
 artfully pled, the court lacks jurisdiction under 28 U.S.C. § 1331.

1 The UD Action is an unlawful detainer proceeding, arising under and governed by the laws of the
 2 State of California. Defendant has failed to allege facts to support federal questions jurisdiction and
 3 because the Complaint does not state a federal question or raise a federal claim on its face, the federal
 4 question jurisdiction cannot be used to support federal jurisdiction in this case. *See Wayne v. DHL*
 5 *Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002); See also, *Moore-Thomas v. Alaska Airlines,*
 6 *Inc.*, 553 F.3d 1241,1244 (9th Cir.2009)(setting forth the “well-pleading complaint rule”). Therefore, the
 7 UD Action should be remanded to the state court.

8 **2. There is no Diversity Jurisdiction under 28 U.S.C. § 1332 because the Amount in**
 9 **Controversy is Less than \$75,000**

10 This unlawful detainer action does not give rise to diversity jurisdiction. See 28 U.S.C. §§ 1332,
 11 1441(b). The underlying complaint states that the amount in controversy does not exceed \$10,000. Thus,
 12 Third Party failed to establish amount in controversy to invoke diversity jurisdiction under 28 U.S.C.
 13 §1332. Moreover, removal on the basis of diversity jurisdiction is not proper because Third Party resides
 14 in the forum state. 28 U.S.C. § 1441(b).

15 Since Third Party has failed to provide evidence with respect to the amount of controversy or the
 16 citizenship of the parties or the diversity of the parties in this matter, and because the amount in
 17 controversy is clearly less than \$75,000.00, Plaintiff’s Motion to Remand this case back to the state court
 18 should be granted.

19 **III. PLAINTIFF IS ENTITLED TO RECOVER ITS ATTORNEYS’ FEES AND COSTS**
 20 **INCURRED AS A RESULT OF THE FILING OF THE MOTION TO REMAND**

21 On granting a motion for remand, the federal court may order the defendant to pay plaintiff its
 22 “just costs and any actual expenses, including attorney fees, incurred as a result of the removal.”³ The
 23 statutory purpose is to deter the possibility of abuse, unnecessary expense and harassment if a defendant
 24 removes improperly. ⁴ In this case, there is no basis for federal subject matter jurisdiction. Clearly
 25 established state and federal law unequivocally prohibit removal under the circumstances of this case.
 26 Moreover, this improper request for removal has frustrated the summary nature of the unlawful detainer
 27 action and has forced the prolonged expenditure of resources in both state and federal court.

28 ³ 28 U.S.C. § 1447(c); *Morris v. Bridgestone/Firestone, Inc.*, 985 F.2d 238, 240. (6th Cir. 1993)

⁴ *Circle Industries USA, Inc. v. Parke Const. Group, Inc.*, 183 F.3d 105, 109. (2nd Cir. 1999).

1 Plaintiff respectfully submits that the Third Party filed the removal to this Court for one purpose:
2 to harass Plaintiff by causing further litigation expenses and unnecessary delay, and otherwise to seek to
3 impede Plaintiff's rights to recover possession of the Property, which it lawfully owns. As such, Plaintiff
4 respectfully requests that it be allowed to recover its reasonable fees and costs incurred in filing this
5 motion for remand in the amount set forth in the accompanying Declaration of Donna La Porte.

6 **IV. CONCLUSION**

7 Based on the foregoing, it is clear that the Third Party's removal of the UD action to the Federal
8 Court is improper, as neither federal question nor diversity jurisdiction exists in the UD Action. It is
9 patently clear that this tactic was taken by the Third Party to harass Plaintiff and cause Plaintiff
10 unnecessary delay in recovering possession of the Property.

11 Accordingly, this motion to remand should be granted and Plaintiff should be granted its
12 reasonable fees and costs incurred in filing this motion for remand.

13 Respectfully Submitted,

14 LA PORTE LAW

15 Dated: February 20, 2019

16 By: /s/Donna L. La Porte

17 Donna L. La Porte, Esq.

18 Attorney for Plaintiff,

19 U.S. BANK, NATIONAL ASSOCIATION AS
20 LEGAL TITLE TRUSTEE FOR TRUMAN 2016
21 SC6 TITLE TRUST
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CERTIFICATE OF SERVICE

I, Donna La Porte, declare:

I am over the age of eighteen and am not a party to the within action. My business address is 2030 Main Street, Suite 1300, Irvine, CA 92614.

On February 20, 2019, I served the foregoing NOTICE OF MOTION AND MOTION TO REMAND CASE AND REQUEST FOR ATTORNEYS FEES AND COSTS OF PLAINTIFF U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST; MEMORANDUM OF POINTS AND AUTHORITIES on all interested parties in this action by placing a true and correct copy thereof, enclosed in a seal envelope, addressed to the following:

Stephen Paul dba Stephen Paul Gibson
c/o SPG Utility Trust
305 N. 2nd Avenue, No. 198
Upland, CA 91786

[X] (BY MAIL) I caused such envelope(s) to be deposited in the mail at Irvine, California. The envelope(s) were mailed with postage fully prepaid thereon. I am readily familiar with the firm's practices for collection and processing of correspondence for mailing. Under that practice, mail would be deposited with the United States Postal Service on the same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presume invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit.

[] (BY ELECTRONIC SERVICE) Pursuant to the CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF system sends an email notification of the filing to the parties and counsel of record listed who are registered with the Court's EC/ECF system.

[X] (FEDERAL) I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I am employed in the office of a member of the bar of this court at whose direction this service was made.

Executed on February 20, 2019, at Tustin, California.

_____/s/ Donna La Porte_____
Donna La Porte